CRAG LAW CENTER

A View of the Summit

2018 SPRING NEWSLETTER
While the federal government has failed to lead us forward in combating climate change, local communities around the country are taking action and writing their own stories of hope and progress. Aided by the federal government, the fossil fuel industry ramped up production of oil and gas, much of it from public lands, in the Rocky Mountains and Northern Plains. With a glut of production, industry needed new markets and new transportation routes for their outdated, dirty sources of energy. Here in the Pacific Northwest, our communities came under attack as a thoroughfare for these fossil fuel exports destined for Asian countries. We fought back.

In this issue of *A View of the Summit*, we profile some of the cutting edge work Crag Law Center has pioneered over the last decade in an effort to protect our local communities from the fossil fuel industry. Maura Fahey discusses a recent court victory defending the City of Portland’s landmark ordinance limiting new fossil fuel infrastructure from a Constitutional attack. Ralph Bloemers profiles victories over three LNG facilities, including the Jordan Cove proposal, which would be responsible for up to 30 million tons of greenhouse gas emissions per year. Scott Hilgenberg talks about our long-running work to protect world-class farmland in the Columbia River valley from being converted to industrial port land for the fossil fuel industry. We also profile a new case in Anacortes, Washington involving a $400 million expansion of an oil refinery along the shores of the Salish Sea.
The thread connecting all of this work is the critical role of local land use laws and local communities enforcing them in preventing the Pacific Northwest from becoming a fossil fuel highway. The citizens are standing up and using our local protections to hold the thin green line. Pipelines, LNG facilities, coal export terminals, crude-by-rail—all these fossil fuel projects would take a heavy toll on community safety, clean air, clean water, and farmland.

Here at Crag we share a vision for a better future with our clients and their communities. The Pacific Northwest will not be held hostage by the fossil fuel industry. We will not turn over our public resources to its oil trains and pipelines and dirty projects. We will lead the country to a low-carbon future and a more sustainable economy.

Finally, we are very excited to introduce you to our newest Board member, Aurora del Val. Aurora is an inspiration to say the least. She led the campaign to pass a ballot measure outlawing commercial water bottling in Hood River County—which passed with 68% of the vote. We are honored to bring her aboard and to build on our successful collaboration in defeating Nestlé and protecting water supplies in the Columbia River Gorge.

Aurora del Val speaking at a rally in Salem. Photo by Blue Ackerman.

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Zoning Portland for a Stable Climate
by Maura Fahey, Staff Attorney

When it comes to protecting the climate, we often find ourselves playing defense against massive fossil fuel development proposals that threaten our communities and environment. In the Pacific Northwest, we have experienced an onslaught of fossil fuel export proposals over the past 10 years. Thankfully, due to the tireless advocacy of conservation groups and community members throughout the region, most of those proposals have been defeated or significantly delayed.

While the reactive approach to stopping fossil fuel developments has proven effective, communities are shifting towards proactive strategies for combating climate change. In December 2016, the City of Portland took a major step forward by adopting citywide restrictions on bulk fossil fuel infrastructure. The City amended its zoning code to restrict new fossil fuel storage facilities greater than 2 million gallons and prohibit expansion of existing facilities. The restrictions were adopted, in part, as a response to a proposed propane terminal along the Columbia River in Portland that was vigorously opposed by local residents, conservation organizations and community groups. The zoning amendments were the first of their kind in the nation and marked a win for climate advocates.

Shortly after the City adopted the zoning amendments, the fossil fuel industry challenged the law before the Oregon Land Use Board of Appeals (the board). Industry contended that the restrictions discriminated against and burdened interstate commerce in violation of the Constitution. Crag stepped up to represent Columbia Riverkeeper, Center for Sustainable Economy, Audubon Society of Portland, and Oregon Physicians for Social Responsibility to defend the law. Although the board sided with the industry opponents, Crag challenged that decision before the Oregon Court of Appeals and won. The appeals court held that the restrictions were constitutional and reversed the board.
The Court of Appeals ruled that restrictions on the size and location of fossil fuel developments were “an exercise of local authority over a particularly local concern[].” The Court noted the City of Portland’s legitimate interests included limiting fossil fuel infrastructure in high-risk earthquake liquefaction zones, reducing the risk of fires, explosions and train derailments, and protecting public health from fossil fuel related pollution.

Crag and our clients are encouraged by the Court’s rejection of the fossil fuel industry’s effort to defeat local action to protect our climate and communities from the dangers of fossil fuels. Right now, it is up to local communities to stand up for our future and to push back against the fossil fuel industry. This case demonstrates that local authority over land use and zoning can be a powerful tool for communities and local governments that want to be leaders on the climate.

The Court’s decision and Portland’s zoning amendments will hopefully provide guidance to other communities looking to adopt similar proactive measures. Several Northwest communities have already begun analyzing and adopting similar restrictions, including Vancouver, Tacoma, Seattle, and Whatcom County, Washington.

*We are currently waiting to see whether the fossil fuel industry opponents will seek review of Portland’s zoning amendments at the Oregon Supreme Court. Stay up to date at our website: crag.org
Take a drive down the winding rural roads north of Clatskanie, Oregon. Meandering through this part of Columbia County, one cannot help but feel a sense of appreciation while observing some of the best farmland in the country. On these agricultural lands in the floodplain of the mighty Columbia River, local farmers grow heirloom peppermint, native spearmint, and plenty of delicious blueberries. These high-quality farmlands are protected under Oregon Statewide Planning Goal 3, Agricultural Lands. Unfortunately the Port of St. Helens and Columbia County appear to not place a high value on this resource.

The port and the county are disregarding the benefit of these unique crops that define this historical farm region to override protection for prime farmland and greatly expand the Port Westward Industrial Park. Under Oregon’s land use safeguards, the existing industrial park would not be allowed today. The park is a remnant from the World War II era, based on a grandfathered ammunition shipping dock. In 2014, the port and county attempted to rezone the adjacent farmland for industrial uses—effectively doubling the existing, underutilized industrial park.

On behalf of local farmers, businesses and residents, Columbia Riverkeeper appealed the decision to the Land Use Board of Appeals (the board) and won. The board criticized the county for biting
off more than it could chew with its attempt to allow undefined industrial uses on farmland. The board found that the county failed to demonstrate that all of the potential new industrial uses, including fossil fuel processing and export uses, would be compatible with existing farm operations, as required under state law.

Fast forward to 2018, when once again, the county and the port are attempting to rezone high-quality farmland. Despite the objection of many members of the community, 1000 Friends of Oregon, and Columbia Riverkeeper, the county approved the port’s modified application in February by a 2-1 vote. The commissioner who voted against the rezone stated he did not think it met the land use safeguards or that this decision was the right direction for the economic future of the county. The county’s 2018 decision looks and smells a lot like the county’s previous decision that the board told the county was deficient.

Given the risks to farmland and clear violations of our land use protections, Crag has once again stepped up to represent Columbia Riverkeeper by filing another appeal with the board. The county’s decision fails to disclose impacts and impermissibly shifts the burden onto the community to show harm when it is the port’s obligation to demonstrate that the rezone is justified under state law. Hopefully this time, the board will finally put an end to the port and county’s ill-conceived attempt to double the size of the industrial park without disclosing and analyzing impacts to the farm community.
Holding the Green Line Using Local Land Use Laws
by Ralph Bloemers, Co-Executive Director

For over a decade, Crag has been working with local communities to hold the line against new fossil fuel terminals and pipelines along the Oregon Coast, including in Coos Bay and the lower Columbia River estuary. Even though the Federal Energy Regulatory Commission regulates these energy projects, developers also must comply with local land use laws. Given our experience in enforcing Oregon’s land use laws, Crag is uniquely positioned to take on this work and build on our relationships with Columbia Riverkeeper, Oregon Shores Conservation Coalition, Native American tribes, and local citizens.

We’ve scored a series of major land use victories over the years—three of which are highlighted below—and we intend to keep up the pressure going forward!

Warrenton
From 2011 to 2016, Crag worked with both Columbia Riverkeeper and Oregon Shores Conservation Coalition to challenge and ultimately defeat the Warrenton LNG export project. Crag used Oregon’s land use laws to demonstrate the proposal’s risks to the community and the significant threats to intertidal wetland habitat critical to endangered salmon survival. The project required dredging 109 acres of estuary and filling 35 acres of wetland just inside the mouth of the Columbia River, near important recreational and commercial fishing grounds. Based on our presentation, the Hearings Officer determined that the project would unreasonably interfere with public trust rights—namely, impacts on fish, fishing, fish habitat, and on-going fish recovery efforts.

Photo: The mouth of the Columbia River - Astoria, Oregon. Courtesy of Phillipe Reichart
In November of 2017, we secured a victory for Oregon Shores Conservation Coalition and local citizens in the long running fight against the Jordan Cove LNG terminal proposed for Coos Bay. Not only would this project threaten local residents with disaster and impact over 200 waterways, it also would lock us into a dirty energy economy through the production of six million metric tons of liquefied natural gas and 30 million tons of carbon dioxide equivalent per year.

Through our advocacy, Oregon’s Land Use Board of Appeals (the board) found that the developer could not ensure compliance with local land use safeguards for estuaries and tidal lands. In particular, the board found that the operator had not addressed the project’s significant impacts to the Coos Bay estuary, including impacts to commercial and recreational fisheries and access to shellfish beds. In response to a companion challenge by the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, the board also issued a strong statement regarding the requirements to include input from local Tribes during the land use review process. This victory is a huge step toward helping Oregon meet its greenhouse gas reduction goals.

*story continues on page 14*
Protecting the Salish Sea from Big Oil

by Chris Winter, Co-Executive Director

On behalf of a large coalition of local interests, Crag is challenging a major expansion of the Tesoro oil refinery in Anacortes, Washington. Tesoro wants to produce a new fossil fuel-based product—mixed xylenes—that would be manufactured from crude oil and then shipped to Asian markets where it would be turned into plastics or other similar products. The xylenes themselves contain a suite of carcinogenic and toxic chemicals found in crude oil, like toluene and ethylbenzene, and the production process involves large quantities of other toxic chemicals, including sulfolane and aqueous ammonia.

The expansion project would cost $400 million, and Tesoro hopes to produce 15,000 barrels per day of xylene or 230 million gallons per year. To give you a sense of the size of the project, the United States currently exports a total of 15,000 barrels per day of mixed xylenes, mostly from Texas—meaning that this one project could double existing exports of the petrochemical product. All 230 million gallons of the xylenes would be loaded onto marine vessels at Tesoro’s aging wharf in Anacortes and then shipped through the busy traffic lanes of the Salish Sea.

Skagit County issued a shoreline development permit to Tesoro because the project requires that new infrastructure be installed on the wharf on state-owned tidal land.
Crag represents a diverse group of local and regional organizations working to protect the Salish Sea for local people and businesses. Crag filed an appeal of the shoreline permit on behalf of Stand.earth, RE Sources for Sustainable Communities, Friends of the San Juans, Evergreen Islands, Friends of the Earth, and the Sierra Club.

Our clients contend that Skagit County cut corners in how it conducted the environmental review for the project, ignoring the significant safety risks posed to local communities in and around the Salish Sea. A major accident involving millions of gallons of xylenes and fuel for the vessels could cut off isolated island communities for days or weeks at a time, interfering with emergency response services and other basic community needs. The project would also be a major emitter of greenhouse gases, with emissions of more than 3 million tons per year involved in production, transportation, and use of mixed xylenes. Despite these risks, Skagit County decided to look only at the very narrow impacts of the discrete equipment installed on the wharf, artificially blinding itself to the broader environmental harms.

In the big picture, this project is just one more way for the oil industry to get its dirty crude oil products to market. The Salish Sea is under attack from a number of fossil fuel projects that will dramatically increase the risk of a major accident in habitat for orca whales, salmon, marine mammals, and seabirds—thereby threatening a vibrant local economy dependent on outdoor recreation and tourism. Crag is proud to represent local communities in their work to protect the natural resources of the Salish Sea and to ensure that they have a meaningful voice in decisions that impact their futures.
**Meet Crag’s New Board Member:**

**Aurora del Val**

*by Carrie Clore, Development Assistant*

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Crag is excited to welcome Aurora del Val to our board of directors. Aurora lives in Cascade Locks, Oregon where she is a life and garden coach as the owner of Althea Coaching. She is also the newly elected President of Hood River’s Rockford Grange. “I love getting dirt under my nails, nurturing the growth of people and plants,” says Aurora. Certified both as a CTI Co-Active Professional Coach and as an Oregon State University Extension Metro Master Gardener, Aurora serves as a community educator and volunteer dedicated to sustainable gardening practices.

“We are thrilled to have Aurora on Crag’s board! I believe her experience in community outreach and fundraising, passion for sustainable land use, and enthusiasm for Crag’s important work will make us an even stronger board and organization,” says Crag board chair, Serin Bussell.

Before focusing on coaching and community advocacy work, Aurora taught English and was Department Chair at Portland Community College’s Southeast Campus. She holds both a B.A. and M.A. in English from San Francisco State University.

Aurora was the Campaign Director for Local Water Alliance (the alliance), a bipartisan community group made up of Hood River County residents working to protect their local water supply from
bottled water operations. Crag represented the alliance to get the Hood River County Water Protection measure (14-55) certified for the May 2016 ballot. The initiative passed with 68% of residents voting “yes” to keep Nestlé—which planned to build a bottled water facility using public water—out of Cascade Locks.

As President of the Rockford Grange, she works with local farmers and community members to promote sustainable farming practices, build community resilience, and increase awareness of issues affecting the agricultural community, such as immigration reform, pesticide use, and water security.

When asked about her interest in joining Crag’s board, Aurora shares, “I’d like to deepen my understanding of the depth and breadth of Crag’s work. Having been a client of Crag, I’d like to give back in service in whatever way would be of useful value. I truly appreciate the integrity of Crag’s work and the dedication to the conservation groups that Crag serves.”

In addition to her passion for gardening, Aurora enjoys writing, hiking, dancing, and sailing with her husband and dog in the Columbia River Gorge.
Lower Columbia River Estuary

In 2010, Crag scored a victory against the Bradwood Landing facility on the Columbia River upstream from Astoria. Working with Columbia Riverkeeper, Crag attorneys Chris Winter and Courtney Johnson argued that the proposed project was not a “small to medium sized water-dependent industrial development,” and that the County had artificially limited its review of the scale of the development to include only the land-based facility itself—excluding any dredging, docking areas and pipelines associated with the facility. The Oregon Court of Appeals hammered the final nail in the coffin for the project, finding that the County could not just minimize adverse impacts on fishing grounds and tribal resources, it had to limit development that could cause significant adverse impacts to these resources.
Crag Credits

Staff Attorneys
Ralph Bloemers, Co-Executive Director
Chris Winter, Co-Executive Director
Courtney Johnson, Operations Director
Maura Fahey, Staff Attorney
Oliver Stiefel, Staff Attorney
Scott Hilgenberg, Land Use Fellow

Support Staff
Suzanne Savell, Development Director
Carrie Clore, Development Assistant
Karen Russell, Bookkeeper
Bella, Office Dog

Volunteers
Lori Davidson, Communications
Dinah Davis, Communications/Design
Sarah Goldstein, Outreach
Shannon Hiller-Webb, Communications
Brooke Jones, Communications/Design
Anu Sawkar, Development
Tayt Weingarten, Legal

Board of Directors
Virginia Borcherdt, Lori Ann Burd, Serin Bussell, Aurora del Val, Gary Kish, Brian Litmans, Leo McCloskey, Charlie Ringo

Foundation Support

Special thanks to the many individuals who donate to support Crag’s work!

Summer Party!
Tuesday
June 26, 2018
6-9 pm
Lagunitas Community Room
237 NE Broadway St #300, Portland